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LIBERTY MUTUAL INSURANCE COMPANY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Liberty Mutual Insurance Company,	)	Case No.: C 06 2022 SC
	)	
Plaintiff,	)	STATUS CONFERENCE
	)	STATEMENT
vs.	)	
	)	Date: March 23, 2007
Michael T. Blatt,	)	Time: 10:00 a.m.
	)	Courtroom: 1
Defendant.	)	
	)	

Plaintiff, Liberty Mutual Insurance Company, submits the following status conference statement for use at the conference scheduled for March 23, 2007.

## DESCRIPTION OF THE CASE

### 1. Brief description of the events underlying the action.

This is an insurance coverage action relating to Liberty's defense of defendant Michael Blatt in an underlying construction defect action. Defendant was an additional insured under a policy issued by Liberty to Schnabel Foundation. Subject to a reservation of rights, Liberty defended Blatt under the terms of an endorsement which provided that Blatt was an additional insured under the Liberty policy, but "only with respect to liability arising out of [Schnabel's] operations . . . ." Schnabel obtained a defense verdict in the underlying action. Blatt paid the judgment entered against him. However, Liberty paid, under a reservation of rights, the amount of \$300,303.85 which reflected that portion of the judgment representing the fees and costs taxed against Blatt in the underlying action. Liberty filed the instant action to recover that amount, plus additional fees and costs which are not covered under the policy.

### 2. The principal factual issues which the parties dispute.

Plaintiff Liberty - No material facts are in dispute.

Defendant Blatt – Accounting for monies claimed by Liberty Mutual.

### 3. The principal legal issues which the parties dispute.

Plaintiff Liberty - The primary legal issues are Liberty's duty to defend Blatt in light of the defense verdict rendered in Schnabel's favor and Liberty's recovery of its payment, under a reservation of rights, of the fees and costs assessed against Blatt in the underlying action and any additional costs and fees which are not covered under the Liberty policy.

1 Defendant Blatt - Blatt alleges that Liberty had a duty to pay the  
2 \$300,303.85 awarded against the defendant due to a prevailing party  
3 attorney-fee clause as such attorneys' fees award are statutorily defined  
4 as costs. Blatt alleges that Liberty had a duty to pay \$303,303.85 as a  
5 "supplementary payment" under the terms of their policy, as a cost taxed  
6 against the insured and in accord with Prichard v. Liberty Mutual Ins. Co.  
7 (2000) 84 Cal.App.4th 890.

8  
9 4. Additional factual issues (e.g. service of process, etc.) which  
10 remain unresolved.

11 None.

12  
13 5. Parties which have not been served in this action.

14 None.

15  
16 6. Additional parties intended to join.

17 None.

18  
19 **ALTERNATIVE DISPUTE RESOLUTION**

20 The parties agreed to the nonbinding alternative dispute resolution  
21 process. The court has appointed Richard D. Warren to act as mediator in  
22 this matter. To date, the parties have not been able to arrange a  
23 mediation date with the mediator, but hope to do so in the immediate  
24 future. The mediator first made contact with the parties on March 9, 2007.

**DISCLOSURES**

The parties have made the following disclosures:

1. Witnesses.

Michael Blatt

Ronald Foreman

Michael Barnette

Experts in the underlying action

Person Most Knowledgeable for Schnabel Foundation

Rand L. Chritton

Joseph D. Ryan

Jacqueline Fagerlin

Al Anolik

Haig Harris

Peter Kane

Mary Kayglaspy

2. Documents.

Foreman and Brasso's attorney billing statements

Foreman and Brasso's files relating to the underlying action

Transcripts in the underlying action relating to trial

Pleadings in the underlying action and all documents on file  
therewith Non-protected, non-privileged portions of Liberty's  
claims file re the defense of Gabbert

Schnabel Foundation files for the underlying action

Ryan and Lifter files for the underlying action

1           3.    Damage Computations.

2           Liberty's damage computations are set forth in its motion for default  
3 judgment, a copy of which has been provided to defendant.

4           4.    Insurance Agreements.

5           A copy of the policy at issue is attached to the complaint filed herein  
6 and thus is already in the possession of defendant.

7  
8           **DISCOVERY**

9           The parties agreed to and previously proposed the following  
10 discovery plan to the court:

11  
12           1.    Documents. To the extent relevant documents in the parties'  
13 possession, custody and control have not yet been exchanged by the  
14 parties, each party will produce the documents in its possession within  
15 sixty (60) days of the case management conference. Documents obtained  
16 from the Marin County Superior Court, including trial transcripts, to the  
17 extent requested by both parties, shall be obtained and the costs split  
18 evenly between the parties.

19  
20           2.    Written Discovery. Written discovery shall be completed by  
21 June 1, 2007.

22  
23           3.    Witnesses. Depositions of any witnesses shall be completed  
24 by July 31, 2007.

25  
26           4.    Expert Witnesses. Any expert witness-related discovery shall  
27 be completed by August 31, 2007.

1 **DISPOSITIVE MOTIONS**

2 The parties previously agreed and proposed to the court that  
3 dispositive motions shall be set for hearing no later than October 1, 2007.  
4

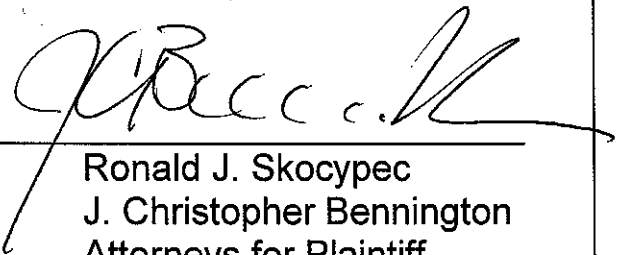
5 **TRIAL SCHEDULE**

6 The parties previously requested a trial date in or around November  
7 15, 2007. The parties expect that the trial will last four days.  
8  
9

10 DATED: March 16, 2007

PETERSON & BRADFORD, LLP

11  
12 By:

13   
14

15 Ronald J. Skocypec  
16 J. Christopher Bennington  
17 Attorneys for Plaintiff  
18 Liberty Mutual Insurance  
19 Company  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 North First Street, Suite 300, Burbank, California 91502.

On March 16, 2007, I served the foregoing document described as:

**STATUS CONFERENCE STATEMENT**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED MAILING LIST**

☒ (BY MAIL)

☐ I deposited such envelope in the mail at Burbank, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Burbank, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 16, 2007, at Burbank, California.

☐ (BY FACSIMILE)

☐ I served by facsimile a true copy of the above-described document. I am "readily familiar" with this firm's practice of processing correspondence by fax. Under that practice documents are placed in our fax machine and are processed and received simultaneously at their destination. The above-referenced document(s) was placed in the fax machine with all costs of faxing prepaid, directed to each party (using their fax number), listed on the attached Service List. Once the document has been transmitted, the fax machine provides a report indicating time of completion.

Executed on \_\_\_\_\_, at Burbank, California.

☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
Maggie Perez

**SERVICE LIST**

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***Defendant***

***\*Courtesy Copy***